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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Reform of the Intrastate Access
Charge Rules

RM-8356

REPLY COMMENTS OF ROCHESTER
TELEPHONE CORPORATION

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Summary

Rochester^{*/} submits this reply to the comments received in response to USTA's petition for rulemaking.

Most parties commenting on the petition urge the Commission to commence the requested rulemaking. Even those parties in opposition acknowledge the need for access charge and separations reform. Thus, the question before the Commission at this juncture is narrow -- whether it should commence a rulemaking to debate the merits and specifics of access charge reform. The answer to that question is in the affirmative.

First, contrary to the suggestion of certain parties, a notice of inquiry is unnecessary. The Commission has already received comments on three different perspectives regarding access charge reform -- the USTA petition, the NARUC petition and the Commission Staff's own analysis of access charge issues. The comments received on these analyses have effectively substituted for a notice of inquiry. Moreover, by commencing a rulemaking, the Commission will not be ignoring the views of parties other than exchange carriers.

^{*/} The abbreviation used in this summary are defined in the text.

Second, USTA's petition provides a comprehensive framework for addressing access charge reform. The world has changed since 1983 and the current rules are obsolete and counterproductive. Although the Commission has addressed a variety of access-related issues, it has not done so in any coordinated or comprehensive manner. More importantly, the Commission's ongoing initiatives are all occurring within the context of the existing rules. The Commission has yet to commence a comprehensive re-examination of those rules.

Rochester agrees with those parties that urge the Commission to undertake a review of the existing separations process and Rochester has consistently urged the Commission to do so. The Commission should promptly convene a Joint Board to undertake this review. Separations reform, however, should proceed concurrently with -- rather than subsequent to -- a review of the access charge rules.

Third, whatever action the Commission takes on USTA's petition should not delay its consideration of the waivers that Rochester has requested in connection with its Open Market Plan. Rochester has proposed its Open Market Plan as a means of facilitating competition in the local exchange in the

Rochester, New York, study area. The Open Market Plan is a unique and strongly pro-competitive blueprint for local exchange competition that warrants prompt -- and favorable -- Commission action.

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REPLY COMMENTS OF ROCHESTER
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Introduction

Rochester Telephone Corporation ("Rochester"), pursuant to section 1.405(b) of the Commission's rules,^{1/} submits this reply to the comments received in response to the petition for rulemaking filed by the United States Telephone Association ("USTA").^{2/}

Most parties commenting on the petition urge the Commission to commence the requested rulemaking. Even those parties in opposition acknowledge the need for access charge and separations reform.^{3/} Thus, the question before the Commission at this juncture is narrow -- whether it should commence a rulemaking to debate the merits and specifics of access charge reform. The answer to that question is in the affirmative.

^{1/} 47 C.F.R. § 1.405(b).

^{2/} Reform of the Interstate Access Charge Rules, RM-8356, Petition for Rulemaking (Sept. 17, 1993) ("Petition").

^{3/} E.g., MCI at 2-3; Sprint at 1.

First, contrary to the suggestion of certain parties,^{4/} a notice of inquiry is unnecessary. The Commission has already received comments on three different perspectives regarding access charge reform -- the USTA petition, the petition of the National Association of Regulatory Utility Commissioners ("NARUC")^{5/} and the Commission Staff's own analysis of access charge issues.^{6/} The comments received on these analyses have effectively substituted for a notice of inquiry. Moreover, by commencing a rulemaking, the Commission will not be ignoring the views of parties other than exchange carriers.^{7/}

Second, USTA's petition provides a comprehensive framework for addressing access charge reform. The world has changed since 1983 and the current rules are obsolete and counterproductive. Although the Commission has addressed a variety of access-related issues,^{8/} it has not done so in any coordinated or comprehensive manner. More importantly, the Commission's ongoing initiatives are all occurring within the

4/ E.g., MCI at 2-3.

5/ NARUC's Request for a Notice of Inquiry Concerning Access Issues DA 93-847, National Association of Regulatory Utility Commissioners Petition for Notice of Inquiry Addressing Access Issues (June 25, 1993).

6/ Access Reform Task Force, Federal Perspectives on Access Charge Reform: A Staff Analysis (April 30, 1993).

7/ See MCI at 2.

8/ Sprint at 9-10.

context of the existing rules. The Commission has yet to commence a comprehensive re-examination of those rules.

Rochester agrees with those parties that urge the Commission to undertake a review of the existing separations process^{9/} and Rochester has consistently urged the Commission to do so.^{10/} The Commission should promptly convene a Joint Board to undertake this review. Separations reform, however, should proceed concurrently with -- rather than subsequent to -- a review of the access charge rules.

Third, whatever action the Commission takes on USTA's petition should not delay its consideration of the waivers that Rochester has requested in connection with its Open Market Plan.^{11/} Rochester has proposed its Open Market Plan as a means of facilitating competition in the local exchange in the Rochester, New York, study area. The Open Market Plan is a unique and strongly pro-competitive blueprint for local exchange competition that warrants prompt -- and favorable -- Commission action.

9/ See, e.g., Ad Hoc at 11-12.

10/ E.g., Transport Rate Structure and Pricing, CC Dkt. 91-213, Comments of Rochester Telephone Corporation at 9 (March 18, 1993).

11/ Rochester Telephone Corporation - Petition for Waivers of Part 61 Tariff Rules and Part 69 Access Charge Rules to Implement Its Open Market Plan, DA 93-687, Petition for Waiver (May 19, 1993).

Argument

I. A NOTICE OF INQUIRY
IS UNNECESSARY.

Certain parties assert that, rather than commence a rulemaking, the Commission should initiate a notice of inquiry to consider access-related issues.^{12/} This additional procedural step is unnecessary. The Commission has already received comments on three different analyses of access-related issues -- the NARUC petition, the Commission Staff analysis and the USTA petition. This initial briefing has already resulted in obtaining the views of participants in all affected segments of the industry. Effectively, these comment cycles have served the purpose of a notice of inquiry.

MCI is simply wrong in suggesting that initiating a rulemaking would freeze out the views of those parties opposed to the specifics of USTA's petition.^{13/} The Commission has already solicited and received those views. It obviously may take them into account in framing a notice of proposed rulemaking. It may also take into account the views of all interested parties in response to a such notice. Given the record already compiled to date, a notice of inquiry would constitute no more than a needless formality.

^{12/} E.g., MCI at 2-3.

^{13/} Id. at 2.

In addition, as explained in Part II, infra, the time is ripe for a re-examination of the existing access charge rules with a view toward specific and comprehensive changes to those rules. The world is changing rapidly and the Commission and the industry do not have the time to engage in the fruitless exercise that a notice of inquiry would occasion.

II. THE USTA PETITION PROVIDES A
SOLID FRAMEWORK UNDER WHICH
THE COMMISSION MAY CONDUCT
A RULEMAKING.

Several parties debate the specifics of the USTA proposal.^{14/} Those parties miss the point. The Commission is not being asked, at this time, to adopt USTA's initiatives. It is only being asked to consider whether to adopt those -- or some other set of -- proposals. Indeed, the oppositions amply demonstrate that the USTA petition provides the appropriate framework for consideration of these issues. Piecemeal changes to the rules are no longer appropriate; wholesale reform of the rules is required.

Those parties that urge the Commission to undertake a review of the separations process^{15/} are correct. Such a proceeding, however should not delay access charge reform. Rather, the two proceedings should be conducted concurrently.

^{14/} E.g., Ad Hoc at 5-11; MFS at 4-10.

^{15/} E.g., Ad Hoc at 11-12.

A. The Commission Should Promptly
Commence the Requested Rulemaking.

In its petition, USTA has convincingly demonstrated that the current access charge rules are obsolete. The world has changed radically since 1983 and will continue to change in the future.^{16/} These changes -- technological, competitive and regulatory -- have rendered the existing rules obsolete.

The distinction between special and switched access -- which forms the cornerstone of the existing Part 69 access charge and Part 61 price cap rules -- has been blurred beyond distinction. The Commission-mandated switched access rate structure has delayed the introduction by exchange carriers of new services that customers want and that competitors -- unencumbered by such regulations -- are able to introduce. Even the opponents of USTA's petition are forced to acknowledge this fact.^{17/}

Competition -- largely absent in 1983 -- is now flourishing. The competitive access industry did not exist in 1983. It now presents a significant challenge to exchange carriers as large, well-financed participants are competing vigorously in exchange carriers' core markets.^{18/} Again,

^{16/} Petition at 7-12.

^{17/} E.g., Sprint at 3.

^{18/} Petition at 8-9.

USTA's opponents cannot dispute the existence of such competition. Rather, they only debate the degree of such competition and the appropriateness of USTA's pricing proposals.^{19/}

Regulation has also changed since 1983. The Commission's form of price cap regulation -- which creates incentives for efficiency and innovation -- has largely replaced traditional cost-of-service regulation. In addition, as USTA explains, price cap regulation seriously dilutes incentives that otherwise may exist for exchange carriers to engage in anticompetitive behavior.^{20/}

USTA's opponents, again, do not contend otherwise. They can merely point to existing Commission proceedings -- such as its expanded interconnection and local transport initiatives -- as evidence that the Commission need not commence a rulemaking.^{21/} What these parties forget is that these proceedings are all taking place within the context of the existing rules. None address the more fundamental question regarding the adequacy vel non of those rules. USTA has shown that the basic framework is no longer appropriate and that a

^{19/} E.g., MCI at 5-6; Sprint at 4-5.

^{20/} Petition at 3.

^{21/} E.g., Sprint at 9-10.

fundamental restructuring of that framework is essential in today's environment.^{22/}

B. Separations Reform Should
Proceed Concurrently with
Access Charge Reform.

Certain parties suggest that the Commission first consider changes to the existing jurisdictional separations rules before considering changes to the access charge rules.^{23/} Rochester agrees that the Commission should initiate a comprehensive review of the existing jurisdictional separations process and has consistently advocated that the Commission convene a Joint Board to do so.^{24/} However, there is no reason for the Commission to address separations and access charge reform sequentially. Both may proceed concurrently and, indeed, should do so.

Thus, the Commission should not only initiate the rulemaking requested by USTA, it should also convene a Joint Board to review the existing separations rules.

^{22/} Petition at 7-11.

^{23/} E.g., Ad Hoc at 11-12.

^{24/} See supra at 3 n.10.

III. THE COMMISSION SHOULD TAKE
PROMPT AND FAVORABLE ACTION
ON THE WAIVERS THAT ROCHESTER
HAS REQUESTED IN CONNECTION WITH
ITS OPEN MARKET PLAN.

Regardless of the action that the Commission takes on USTA's petition, it should promptly grant the waivers that Rochester has requested in connection with its Open Market Plan. As USTA notes, Rochester has proposed its Open Market Plan to respond to unique circumstances in the Rochester, New York study area.^{25/}

Rochester has proposed its Open Market Plan to facilitate local exchange competition. The Rochester initiative is unique, pro-competitive and goes well beyond what the Commission is considering today and what USTA proposes. Nonetheless, the specific waivers that Rochester has requested represent only relatively modest departures from the existing access charge rules.^{26/} The Commission should promptly grant the waivers that Rochester has requested.

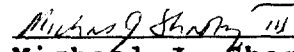
^{25/} Petition at 3 n.5.

^{26/} Rochester Telephone Corporation - Petition for Waiver of Part 61 Tariff and Part 69 Access Charge Rules to Implement Its Open Market Plan, DA 93-687, Reply Comments of Rochester Telephone Corporation at 23 (Aug. 9, 1993).

Conclusion

For the foregoing reasons, the Commission should initiate the rulemaking requested by USTA. The Commission should also promptly grant the waivers that Rochester has requested in connection with its Open Market Plan.

Respectfully submitted,


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Certificate of Service

I hereby certify that, on the 15th day of November, 1993, the foregoing Reply Comments of Rochester Telephone Corporation were served by first-class mail, postage prepaid, upon the parties on the attached service list.

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